



conventional development on the same site. The Regulation's plain terms vest a presiding zoning board with the power to deny or conditionally approve a project with impunity if less than 12 months have elapsed between the disposition of a prior conventional application and the submittal of a comprehensive permit application. On Friday, February 22, 2008, DHCD substantially amended all of its c. 40B regulations.<sup>1</sup> While the Regulation remains generally intact, it has been renumbered as 760 CMR 56.03(7), which defines a prior "Related Application" as follows:

*Related Applications*

*For the purposes of this subsection, a related application shall mean that less than 12 months has elapsed between the date of application for a Comprehensive Permit and any of the following:*

- (a) the date of filing of a prior application for a variance, special permit, subdivision or other approval related to construction on the same land if that application was for a prior project that was principally non-residential in use, or if the prior project was principally residential in use, if it did not include at least 10% SHI Eligible Housing units;*
- (b) any date during which such an application was pending before a local permit granting authority;*
- (c) the date of disposition of such an application (including all appeals);*  
*or*
- (d) the date of withdrawal of such an application.*

*An application shall not be considered a prior application if it concerns insubstantial construction or modification of the preexisting use of the land.*

Under 760 CMR 56.03(1)(e), a Board may deny a prior Related Application. The Board expressed to the Applicant that it was potentially willing to consider foregoing the exercise of its rights under the Regulation, provided that the Applicant provide a revised plan that reduces the bulk of the building in a manner that would allow it both to be better assimilated into the Scituate harborfront and to address important safety concerns. Unfortunately, the Applicant offered only minor design revisions, failing to address the core concerns of the Board.

## II. FINDINGS AND DECISION

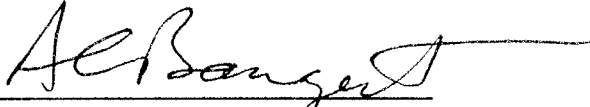
The Board finds that the prior special permit application constitutes a prior Related Application, as defined under 760 CMR 56.03(7). The Board also finds that the Applicant did not provide an adequate rationale to warrant a waiver of its rights to deny the Comprehensive Permit Application pursuant to its rights under 760 CMR 56.03(1)(e).

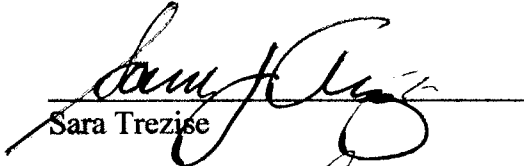
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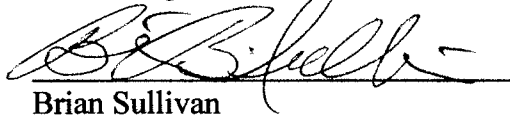
<sup>1</sup> Under the Transitional Rules, the new version of the Regulations is retroactive.

Accordingly, for the foregoing reasons and pursuant to 760 CMR 56.03(1)(e), by Motion of Albert Bangert, seconded by Sara Trezise, the Board unanimously voted to deny the Application.

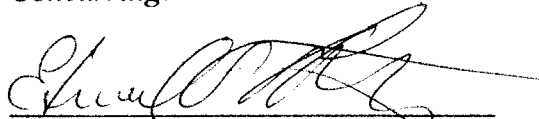
ZONING BOARD OF APPEALS

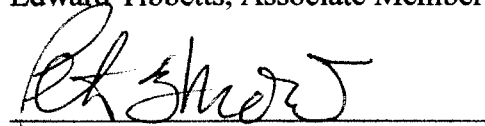
  
Albert Bangert, Chairman

  
Sara Trezise

  
Brian Sullivan

*Concurring:*

  
Edward Tibbetts, Associate Member

  
Peter Morin, Associate Member

Filed with the Town Clerk on 4/1/08

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds after the appeal period of twenty (20) days.

Any appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Chapter 40B, §§20-23, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.